

APPENDIX D

**SAN GORGONIO PASS WATER AGENCY
WATER FACILITIES MASTER PLAN
COOPERATIVE AGREEMENT**

**CITY OF BEAUMONT
AND
BEAUMONT-CHERRY VALLEY WATER DISTRICT**

MARCH 15, 1993

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**SAN GORGONIO PASS WATER AGENCY
WATER FACILITIES MASTER PLAN
COOPERATIVE AGREEMENT**

THIS AGREEMENT (the "Agreement") is made and entered into as of March 15, 1993, by SAN GORGONIO PASS WATER AGENCY, a public agency organized and existing pursuant to Act 9099 of the Uncodified Acts (hereinafter the "Agency"), the CITY OF BEAUMONT, a municipal corporation and public agency of the State of California (hereinafter the "City") and BEAUMONT-CHERRY VALLEY WATER DISTRICT, a public agency organized and existing pursuant to Division 11 (commencing with Section 20500) of the California Water Code (hereinafter the "District").

RECITALS

- A. Agency was formed in 1961 for the purpose of contracting with the State and providing supplemental water from the State Water Project to the San Gorgonio Pass area. To that end, Agency has invested in excess of \$26 Million Dollars for the construction of State and local facilities extending from the Sacramento Delta 350 miles south into San Bernardino County. There remains 7 miles of the system to be constructed to bring the supplemental water supply facilities to Agency's boundaries which will be connected into a master planned regional system of water spreading, storage, groundwater recovery, treatment and distribution facilities.
- B. Agency is currently preparing engineering feasibility investigation and facility plans, conducting environmental review and analysis, and preliminary financing studies for completion of the master plan system.
- C. Agency contemplates, at this time, financing the major elements of such regional facilities with general obligation bonds and capacity fees from new development in the area.
- D. There is concern that the Beaumont Basin, a major source of local groundwater supply, is in danger of being depleted and the City and District are in need of imported water to stabilize the Beaumont Groundwater Basin and accommodate the respective Master Facility Plans for the Agency and the District.
- E. Agency believes that water reclamation and water conservation are important water development programs that can extend limited imported and local water supplies and, therefore, contemplates incorporating an element into the capacity fee structure that will encourage local water reclamation and conservation.

- F. City and District are processing the planning, environmental review and preliminary design and financing plans for local water and wastewater facilities and methods of financing these facilities (local facilities) as required to implement the City General Plan and the District Master Plan.
- G. City, District and the Agency recognize the need to cooperate in a long-term program to maintain safe groundwater management practices, to establish funding mechanisms to provide for the acquisition and development of new sources of water supply, including reclaimed water and imported water, in such a way as to protect and preserve the existing water supply.
- H. City is contemplating the formation of a public financing district, and specifically proceedings for the formation of Community Facilities District No. 93-1 (hereinafter referred to as "CFD No. 93-1"), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Section 53311 et seq. of the California Government Code (hereinafter the "Act") to finance the local facilities.
- I. The processing of necessary planning, environmental review, design and financing of facilities requires the cooperation and coordination of City, District and Agency.

In consideration of the mutual promises of the parties as hereinafter set forth, the parties agree as follow:

AGREEMENT

1. Regional and Backup Facilities.

Under its Water Importation Program, the Agency is planning the construction of facilities for the Pass Agency area described in Exhibit "A" hereto designated as Capital Facilities (the "Agency Facilities"). The Agency Facilities will be broken down into phases and will be constructed in an order as is appropriate under existing demand as determined by the Agency subject to the provisions of this Agreement. To implement such Program, the Agency is considering various methods to raise money to pay for the Agency Facilities, including, but not limited to, financing the Agency Facilities by the authorization of general obligation bonds and capacity fees as set forth in Section 4 of this Agreement. Certain elements of the Agency Facilities are needed in the absence of an Agency-wide financing as described herein as part of the City and District plans for the construction of facilities necessary to serve the City CFD No. 93-1 (the "Backup Facilities" herein) and are set out on Exhibit "B". In order to coordinate the planning, environmental review, design, and construction of Regional or Backup Facilities, cooperation is required to maximize environmental mitigation, design and operational efficiency and to minimize duplication, redundancy and delay.

2. Cooperation.

Agency, City and District will meet, confer and provide information and cooperate to provide necessary related data to each other about their water, reclaimed water and wastewater planning and to insure logical development of regional and local water, reclaimed water and wastewater facilities and supplies. Such plans include, but are not limited to:

- City General Plan and Comprehensive Facility Financing Plan
- District Water Facility Master Plan.
- Agency Imported Water Facility Programs and Facility Master Plans.
- Agency Groundwater Management Programs.
- Agency and District Groundwater Recovery Well Systems.
- City, District and Agency Mitigation/Capacity Fee Programs.
- Coordination of Financing Programs.
- Coordination of Environmental Review and Processing.

3. Environmental Review and Processing.

Agency, City and District acknowledge that before the construction of any new facilities may be approved, there must be proceedings under the California Environmental Quality Act (CEQA) to determine the environmental impact of the project and, based upon that impact, or lack thereof, whether or not the project should be approved. In entering into this Agreement, the parties acknowledge and agree they have not prejudged the potential outcome of the CEQA proceeding, but are reaching accord in the event the plan to construct the facilities and related programs receive CEQA approval.

4. Financing.

In order to finance the construction, operation and maintenance of the Regional or Backup Facilities, the Agency, City and District will secure funds in the following manner:

- a. Agency Financing of Regional Facilities, Completion of Backup Facilities.

At this time, Agency plans to finance the Regional Facilities by the issuance of general obligation bonds and

capacity fees for new development. The general obligation bonds will be used to construct the Agency Capital Facilities (Exhibit "A") and, as each new development occurs, capacity fees will be charged as a condition precedent to issuance of a building permit in each public agency having land use authority or water service connections in each retail water purveyors' service area within the Agency jurisdiction. The capacity fees will be used in large part to assist in planning, environmental review, design and for construction of facilities and structuring Agency bonded indebtedness in order to provide an equitable cost-sharing of the facilities between the existing property owners and new development. Agency may, in its discretion, adopt other methods of financing the Agency Facilities. The Agency agrees that within two (2) years following delivery of the full amount of funds from the sale of the Agency's general obligation bonds or other financing program to construct the facilities listed on Exhibit "B" or such facilities as are otherwise agreed to by the Agency, City and District needed to serve CFD No. 93-1.

b. City and District Financing of Backup Facilities.

City is contemplating the formation of a public financing district, and specifically proceedings for the formation of Community Facilities District No. 93-1 (hereinafter referred to as "CFD No. 93-1"), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Section 53311 et seq. of the California Government Code (hereinafter the "Act") for the purpose of financing the acquisition and construction of certain public facilities to benefit an area of land proposed for development. The establishment of the CFD will include a special election in which the electors decide upon the formation of the district and the sale of bonded indebtedness secured by a special tax within the CFD to fund debt service on the bonds. A copy of the CFD No. 93-1 map is attached hereto as Exhibit "C". A portion of these bond funds may be made available to the Agency for completion of Regional Facilities or Backup Facilities through a joint financing agreement as provided herein.

c. Alternative Agency Financing and Completion.

City intends to provide bond authorization and capacity to fund the Agency Facilities in the event the Agency financing is not available to timely provide the District's imported water requirement at sufficient levels to serve land within CFD No. 93-1 in accordance with District policies. The Agency shall have a reasonable time to secure an Agency-wide financing program for the Agency Facilities (Exhibit "A"). If, in the discretion of the Agency Board of Directors, it is determined it is not reasonably possible to obtain an Agency-

wide financing in time to meet the need for water for CFD No. 93-1, the Agency will accept funding for the Backup Facilities (Exhibit "B") from CFD No. 93-1. The Agency agrees that within two (2) years following the delivery of sufficient funds to the Agency from the sale of CFD No. 93-1 special tax bonds or other duly authorized sources, provided all environmental clearances have been secured and facilities, engineering and design have been completed, the Agency will construct the facilities listed on Exhibit "B", which are the minimum facilities needed to serve lands within CFD No. 93-1. Agency will exercise its best efforts to complete the engineering and design according to applicable customary standards of practice and to complete all applicable environmental processing of the facilities listed on Exhibits "B", subject to funding being available to the Agency to finance such activities prior to delivery of funds by CFD No. 93-1 to the Agency. Any Agency financing subsequently authorized shall, in the discretion of the Agency Board, be sized to construct all or a part of the Agency Capital Facilities (Exhibit "A"), including provisions to refund the funds paid to the Agency by CFD No. 93-1 in such amounts as are consistent with the terms of this Agreement.

d. Mitigation/Capacity Fees.

(1) Agency Mitigation/Capacity Fees.

The Agency has completed its participation in the construction of 350 miles of pipeline capacity from the San Joaquin Delta to the Greenspot Pump Station, and certain other facilities of the SBVMWD and the Santa Ana River-Mill Creek Cooperative Water Project. The Agency's regional facilities will complete the extension of capacity of the facilities for delivery of State Project water into the Pass area. The Agency Mitigation/Capacity Fees will be in two stages, Backup Mitigation/Capacity Fees and Definitive Mitigation/Capacity Fees. Backup Mitigation/Capacity Fees are defined as the fees that are established concurrent with execution of this Agreement. Definitive Mitigation/Capacity Fees are defined as in Section 4. d.(3).

(2) Adjustment of Mitigation/Capacity Fees.

The backup and definitive Mitigation/Capacity Fees shall be subject to adjustment from time to time to reflect changes in costs of construction or types of facilities needed or methods to fairly allocate the fees according to law.

(3) Definitive Mitigation/Capacity Fees.

No later than eighteen (18) months following the first bond sales and the imposition of backup Mitigation/Capacity Fees, City, District and Agency shall initiate detailed studies and use their best efforts to adopt definitive Mitigation/Capacity Fees and phasing schedule for water importation and water distribution as required to serve land within the Agency. Mitigation/Capacity Fees shall be collected in accordance with cooperative agreements between the Agency and applicable public agencies and retail water purveyors as set forth in Section 4.e.(2) of this Agreement or may be paid by public financing districts through the sale of bonds, which will be repaid by property owners participating in such financing districts, through the collection of special taxes or assessments. In the event Agency's or Districts imported water facilities or supplies to serve land within CFD No. 93-1 are funded in whole or in part by the City or the District with Mitigation/Capacity Fees, bonds or from other sources, as set out in Section 4.c of this Agreement, Agency Mitigation/Capacity Fees shall be reduced on those projects providing or participating in such funding to the extent of such funding. Backup Mitigation/Capacity Fees shall remain in place until such time as Agency has (1) entered into cooperative agreements with all water retail purveyors, or all public agencies having land use authority within Agency jurisdictional area that have access or use of the Facilities, including use of Agency-replenished groundwater, or (2) has implemented an Agency general obligation bond program or other Agency-wide general obligation bond program or other Agency financing scheme as set forth in Section 4.a. for Agency Facilities, the benefits or use of which is limited to boundaries within which Definitive Mitigation/Capacity Fees can be collected as set forth in Section 4.d(4).

(4) Collection of Mitigation/Capacity Fees.

City agrees, as a condition of issuing any building permits or approving any development within Agency jurisdiction, that it shall require the written consent of the Agency, which consent shall be for the purpose of verifying the collection of the Mitigation/Capacity Fee prior to issuance of building permits.

District agrees, as a condition precedent to issuing water connection permits, in the City CFD No. 93-1 or any area annexed to District after date of this Agreement, that it shall obtain the written consent of the Agency, which consent shall be for the purpose of collecting

verifying the collection of the Mitigation/Capacity Fee prior to installation of the water meter or other water service facility ("Agency Consent" herein). The Agency shall have the authority to enter into agreements with the County of Riverside or any local agency with land use planning authority and jurisdiction, as a condition precedent to issuing building permits, on lands in the District as of the date of execution of this Agreement that are not within the City, to require Agency Consent.

The calculation for Agency Backup Mitigation/Capacity Fee charges is set forth on the attached Exhibit "D".

(5) Mitigation/Capacity Fee Credits.

(a) Mitigation/Capacity Fee Credits.

Mitigation/Capacity Fees (excluding annexation fees) shall be waived, reduced and/or credited by responsible agencies for the benefit of property participating in any public financing district for facilities for which such Mitigation/Capacity Fees are collected, to the extent the property provides security for obligations (i.e., bonds, bond anticipation notes) issued by such public financing district, or as otherwise provided by Development Agreements between individual landowners and the respective water and sewer agencies.

(b) Conservation/Reclamation Credits.

Agency agrees to study and adopt, as it deems in its discretion appropriate, reductions in Agency fees to City and District for the implementation of conservation measures and programs, as well as for reclamation facilities and usage of reclaimed water.

e. Facility Utilization.

(1) Agency shall use its best efforts to complete a financing program for Agency Facilities or to impose a facilities fee on all development projects outside the boundaries of City so that such projects pay their fair share (based on a benefit analysis) of applicable costs for facilities described in Exhibit "A" hereto. Any funding of Agency Facilities by CFD No. 93-1 which exceeds the fair share of applicable costs by the properties participating in CFD No. 93-1 shall be subject to reimbursement by the Agency to CFD No. 93-1 from such

facilities fees collected or from any other financing source.

(2) Agency shall adopt a policy, as a condition precedent to delivery of Agency imported supplies, that any retailing water purveyor or public agency having land use authority within the Agency jurisdictional area, enter into a Cooperative Agreement with the Agency. The Cooperative Agreement shall include a requirement for payment of Agency Mitigation/Capacity Fees prior to issuance of building permits pursuant to a written consent of the Agency.

(3) Agency, City and District agree to exercise their best efforts to enter into a Joint Financing Agreement for the purpose of the construction of Backup Facilities (Exhibit "B"), the terms of which shall be consistent with the provision of this Agreement and which Agreement will provide for the reimbursement to the Agency for costs of administration, legal, engineering, financial, consulting and other costs related to the Backup Facilities.

(4) Agency and District agree to cooperate with City in the formation of public financing districts by entering into Utility Agreements, to the extent reasonably required, pursuant to §10110 of the Streets and Highways Code of the State of California, or as reasonably required in a Joint Financing Agreement, pursuant to §§53316.2, 53316.4 and 53316.6 of the Act, relating to facilities which will be financed by the City and transferred to the District or Agency, as appropriate, which will own, operate and maintain such facilities.

f. Water Service.

This Agreement shall be limited to water facilities related to CFD No. 93-1 with a maximum demand not to exceed 4,000 acre-feet per year. This does not preclude the ability to increase the maximum demand of 4,000 acre-feet/year provided, through the exercise of its best efforts, the Agency is able to secure additional supplies to meet the water requirements of CFD No. 93-1. The collection and payment of a Mitigation/Capacity Fee by a property owner or developer or the payment for facilities by financing provided by the City or District shall not be construed as, nor be evidence of, the allocation of any capacity in the Agency's water facilities or to the water to be distributed by the Agency within its service area. However, upon payment of the fee, and in the event of an imported water shortage or impacts identified in the Agency's environmental proceedings, or conditions of overdraft as determined by the Agency Board, in its

discretion, in any groundwater basin within the Agency's boundaries which does not allow the Agency to provide water sufficient for the needs of CFD No. 93-1, Agency shall provide water to CFD No. 93-1 and others of like class of service on a uniform basis consistent with law. The Mitigation/Capacity Fee charges is for the sole purpose of the right to service if and when any water is available for use by the Agency.

5. Condition Precedent.

Agency acknowledges that there are provisions which must be agreed to between City and District and to which Agency is not a necessary party. These provisions deal specifically with financing of projects by City and District within their own jurisdictions, as well as with facilities for water, reclaimed water and sewer facilities. The effectiveness of this Agreement is conditioned on execution of the agreement between City and District in essentially the form attached hereto as Exhibit "D" for reference. However, after execution, any failure of performance or breach of the Agreement, as set out on Exhibit "D", shall not excuse performance by the City or District to provide for collection of the Agency Mitigation/Capacity Fees as provided in Section 4 hereof, provided the conditions set forth in Paragraph 4.d.(3) have been performed.

6. Formation of Agency Improvement Districts.

It is contemplated that Agency may form improvement districts for the benefit of the Agency over the City and District for the purpose of creating different classes of service or different benefits provided to the areas overlying the City and District in order to provide the basis for varying the fees, charge and costs in such areas. City and District agree to meet and confer, exchange information with the Agency and develop applicable information on a timely basis to determine if they can support the formation of such improvement district(s).

7. Notice.

Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any party or other person shall be deemed to have been received when personally delivered or seventy-two hours following deposit of the same in any United States Post Office in California, first class, postage prepaid, addressed as follows:

City:	City of Beaumont
	550 East Sixth Street
	P. O. Box 158
	Beaumont, California 92223
	ATTN: Dayle Keller, City Manager
	Tel: 909-845-1171
	Fax: 909-845-8483

District: Beaumont-Cherry Valley Water District
560 Magnolia Avenue
P. O. Box 2037
Beaumont, California 92223
ATTN: Chuck Butcher, General Manager
Tel: 909-845-9581
Fax: 909-845-0159

Agency: San Gorgonio Pass Water Agency
795 East Sixth Street, Suite H
P. O. Box 520
Beaumont, California 92223
ATTN: Stephen P. Stockton, General Manager
Tel: 909-845-2577
Fax: 909-845-0281

Any party may change its address for delivery of notice by delivering written notice of such change of address to the other parties.

8. Captions.

Captions to Sections of this Agreement are for convenience purposes only and are not part of this Agreement.

9. Severability.

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

10. No Third Party Beneficiaries.

The parties do not intend the benefits of this Agreement to inure to any third party, nor shall any of this Agreement be construed or make or render the City, the District or the Agency liable to any materialman, supplier, contractor, subcontractor, or purchaser or for debts or claims accruing to any such persons. Notwithstanding anything to the contrary contained herein or in any document executed in connection with this transaction, or any conduct or course of conduct by any party hereto, before and after signing this Agreement, shall not be construed as creating any claim, right or cause of action against the City, the District, the Agency or their respective officers, directors, agents, administrators, engineers, consultants, or employees in favor of any materialman, supplier, contractor, subcontractor or purchaser, or the like.

11. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

12. Entire Agreement.

This Agreement contains the entire agreement between the parties with respect to the matters provided herein.

13. Amendments.

This Agreement may be amended or modified only in writing signed by all parties hereto.

14. Exhibits.

The following exhibits attached hereto are incorporated into this Agreement by reference.

<u>Exhibit</u>	<u>Description</u>
"A"	Imported Water Capital ("Regional") Facilities Description and Budget
"B"	Backup Facilities
"C"	CFD No. 93-1 Map
"D"	Agency Backup Mitigation/Capacity Fee Calculation
"E"	Agreement between City of Beaumont and Beaumont-Cherry Valley Water District

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15. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year indicated below.

DATED: April 5, 1993 SAN GORGONIO PASS WATER AGENCY

APPROVED AS TO FORM

[Signature]
ATTORNEY

By [Signature]

DATED: April 20, 1993 CITY OF BEAUMONT

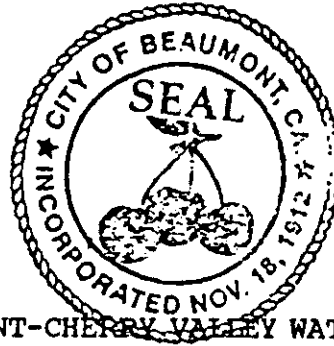
APPROVED AS TO FORM

[Signature]
ATTORNEY

By [Signature]
Mayor of the City of Beaumont

ATTEST:

By: [Signature]
City Clerk of the City
of Beaumont



DATED: April 1, 1993 BEAUMONT-CHERRY VALLEY WATER DISTRICT

APPROVED AS TO FORM

[Signature]
ATTORNEY

By [Signature]

EXHIBIT "A"

IMPORTED WATER CAPITAL ("REGIONAL") FACILITIES

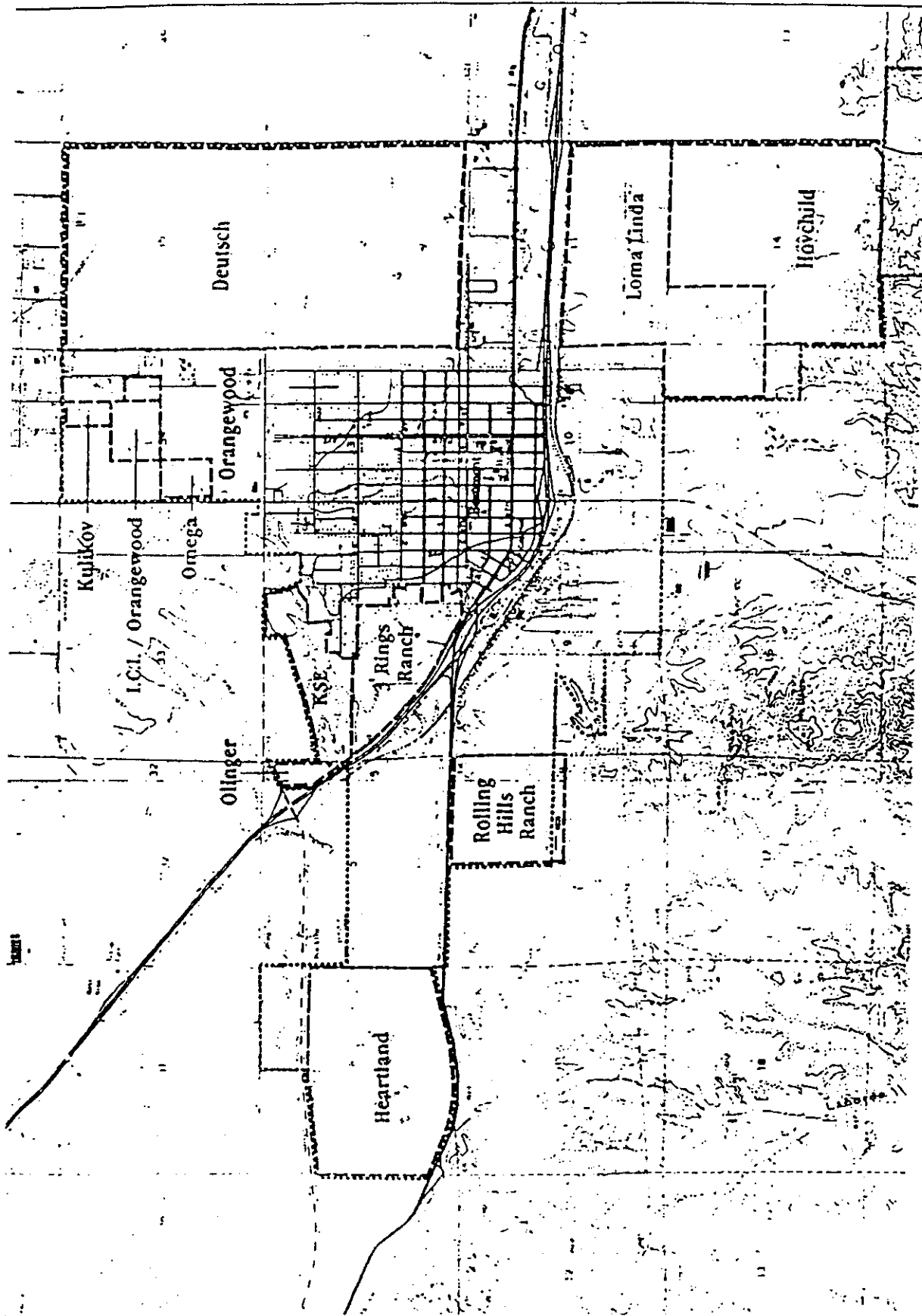
DESCRIPTION AND BUDGET		ESTIMATED
PROJECT ELEMENTS		TOTALS (X1,000)
<hr/>		
1. SBVMWD FACILITIES		
A. Foothill, Greenspot, and Zanja P.S.		\$11,620
B. Yucaipa Pumping Station		10,040
C. Yucaipa Connector		2,950
2. SAN GORGONIO PASS FEEDER		
A. Bryant/Countyline Unit		6,040
B. Singleton Unit		11,340
C. Cherry Valley P.S.		2,930
D. Noble Creek Unit		2,100
E. Smith Creek Unit		2,080
3. UPPER SINGLETON RESERVOIR		31,860
4. REGIONAL WATER TREATMENT PLANT		35,720
5. DISTRIBUTION FEEDERS		
A. Calimesa Unit		3,800
B. Beaumont-Banning Unit		5,965
6. GROUNDWATER STORAGE PROJECT		
A. Recharge Facilities		10,515
B. Recovery Wells		10,140
TOTAL		\$147,100

EXHIBIT "B"

BACKUP FACILITIES

AGENCY FACILITIES

PROJECT ELEMENTS	ESTIMATED TOTALS (X1,000)
1. SBVMWD FACILITIES	
A. Greenspot Pumping Station (interim)	\$ 830
B. Yucaipa Pumping Station (interim)	640
C. Yucaipa Connector	1,500
2. SAN GORGONIO PASS FEEDER	
A. Bryant/Countyline Unit	6,040
B. Singleton Unit	11,340
C. Cherry Valley P.S.	2,930
D. Noble Creek Unit	2,100
3. REGIONAL WATER TREATMENT PLANT	
A. First Stage (10 mgd)	16,000
B. Beaumont Pipeline	3,500
4. GROUNDWATER STORAGE PROJECT	
A. Recharge Facilities	3,300
B. Recovery Wells (3)	2,535
TOTAL	\$50,715



City of Beaumont Public Facilities Financing Plan

EXHIBIT "C"
CFD NO. 93-1
PROPOSED BOUNDARIES

EXHIBIT "D"

AGENCY BACKUP MITIGATION/CAPACITY

FEE CALCULATION

I. AGENCY FACILITIES FEE

The following calculation assumes the construction of 23,500 new EDU's within the Agency:

Exhibit "B" Facilities:	\$50,715,000
Total Cost per EDU	\$ 2,158

EXHIBIT "E"

**AGREEMENT BETWEEN CITY OF BEAUMONT
AND
BEAUMONT-CHERRY VALLEY WATER DISTRICT**